

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**FOOD NOT BOMBS HOUSTON,
BRANDON WALSH**

Plaintiffs

v.

THE CITY OF HOUSTON, TEXAS,

Defendant

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C.A. No. 4:24-CV-00338

Consolidated with

PHILLIP PICONE,

Plaintiff

v.

**OFFICER A. ANCIRA, *in his*
Individual capacity, and THE CITY OF
HOUSTON, TEXAS,**

Defendants

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C.A. NO. 4:23-CV-1206

Judge Andrew Hanen

**DEFENDANT CITY OF HOUSTON’S MOTION TO STRIKE
ORIGINAL COMPLAINT IN INTERVENTION**

Pursuant to this Court’s April 12, 2024 Scheduling Order (Dkt. 27), January 31, 2025 order amending the deadlines for the Parties to file dispositive and non-dispositive motions (Dkt. 39), and Federal Rules of Civil Procedure 19 and 24, Defendant City of Houston moves to strike the untimely Intervenor’s Original

Complaint in Intervention (Dkt. 41). In support of this request, Houston respectfully shows:

1. These consolidated cases challenge a City of Houston ordinance that prohibits Plaintiffs and others from providing food without charge to more than five people in need on City property without the City's advance written consent. *See* Dkt. 1 (Case No. 4:24-cv-338), Dkt. 8 (Case No. 4:23-cv-1206); Houston City Code § 20-252.

2. The deadline for joinder of new parties was July 12, 2024 (Dkt. 27). No new parties timely intervened in this case. The Intervenor's Original Complaint in Intervention was filed over 8 months after the joinder deadline in this case. (Dkt. 41). Remington Alessi, Counsel for the Intervenor, is also counsel for Plaintiff Food Not Bombs Houston in this case. (*See* Dkt. 1). Intervenor's counsel was thus aware of the deadlines in the scheduling order for adding additional parties, and has offered no justification for this attempted intervention over 8 months after the joinder deadline. While Mr. Alessi apparently acknowledges some unspecified filing error as reflected in the Court/s CM ECF entry modification, he does not appear to have withdrawn the Complaint in Intervention. (Dkt. 41).

3. Federal Rule of Civil Procedure 24 requires any intervention to be requested by motion to intervene and served on the parties as provided in Rule 5. FED. R. CIV. P. 24. The motion must state the grounds for intervention and be

accompanied by a pleading that sets out the claim or defense for which the intervention is sought. *Id.* Purported intervenors John Locke, Benjamin Franklin Sequoia Craft-Rendon, Nicholas Cooper, and Alan Foster's Original Complaint in Intervention (Dkt. 41) is not accompanied by an appropriate motion and order as required by Federal Rule of Civil Procedure 24 and should be stricken. *Id.*

4. It is not feasible to join additional parties to the litigation at this late date. When joinder of additional parties is not feasible, as here, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties. FED. R. CIV. P. 19. The existing parties adequately represent the interests of the purported intervenors and undoubtedly will make all of the absent parties' arguments. *See Salt River Project Agric. Imprv. & Power Dist. v. Lee*, 672 F.3d 1176, 1178-80 (9th Cir. 2012) (district court can accord the complete injunctive relief sought absent additional parties). The current parties are capable of and willing to make all the absent parties' arguments, and the absent parties will not offer any necessary element to the proceedings that the present parties would neglect. *Id.* In this case, there is no reason to believe the existing parties cannot or will not make any reasonable argument that the purported intervenors would make if they were parties and their late attempt at intervention should be denied.

5. For the foregoing reasons, Defendant City of Houston respectfully

requests that this Court grant its motion to strike the Intervenor's Original Complaint in Intervention (Dkt. 41) and for such other and further relief as justice may require.

Dated: March 21, 2025.

Respectfully submitted,

Respectfully submitted,
ARTURO G. MICHEL
City Attorney
SUZANNE R. CHAUVIN
Chief, General Litigation Section

By: /s/ M. Lucille Anderson
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CERTIFICATE OF CONFERENCE

I certify that on March 21, 2025, Counsel for Defendant City of Houston conferred with counsel for Plaintiffs Food Not Bombs Houston and Brandon Walsh via telephone and email and Counsel for Plaintiff Phillip Picone via email. Plaintiffs Food Not Bombs Houston and Brandon Walsh are unopposed to Houston's motion to strike. Plaintiff Phillip Picone is opposed to Houston's motion to strike.

/s/ M. Lucille Anderson
M. Lucille Anderson

CERTIFICATE OF SERVICE

I certify that on March 21, 2025, a true and correct copy of this document was properly served on all counsel of record via electronic filing.

/s/ M. Lucille Anderson
M. Lucille Anderson